

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Amarillo, Texas

**SOUTHWESTERN PUBLIC
SERVICE COMPANY, INC.¹**

Employer

and

Case No. 16-RC-10669

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS,
LOCAL UNION 602**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner, International Brotherhood of Electrical Workers, Local 602, (IBEW) filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent all full-time, regular part-time, and temporary lead meter readers and meter readers, but seeking to exclude all other employees, supervisors, clerical employees, and guards as defined by the Act. In addition, the Petitioner seeks a self-determination election, pursuant to the Board's decisions in *The Globe Machine & Stamping Co.*, 3 NLRB 297 (1937) and *Armour & Co.*, 401 NLRB 1333 (1942), to allow members of the proposed unit to determine whether they desire to be included in the existing bargaining unit currently represented by the Petitioner. The existing bargaining unit consists of approximately

¹ The Employer's name appears as amended at the hearing.

610 employees.² The proposed unit consists of 72 employees. The Employer contends that the Regional Director should not order a self-determination election as requested by the Petitioner because the proposed bargaining unit lacks a community of interest with the current bargaining unit.

ISSUES PRESENTED

The issue before me is whether I should order a self-determination election pursuant to *The Globe Machine & Stamping Co.*, 3 NLRB 294 (1937) and *Armour & Co.*, 40 NLRB 1333 (1942), allowing employees currently working as full-time, regular part-time, and temporary lead meter readers and meter readers to vote as to whether they should be included in the bargaining unit currently represented by the Union.

THE REGIONAL DIRECTOR'S FINDINGS

A hearing officer of the National Labor Relations Board conducted a hearing on this matter and the parties submitted post-hearing briefs. Based on the record evidence, I conclude that meter readers do not share a community of interest with the current bargaining unit, and therefore, a *Globe-Armour* election is not appropriate. I find that a unit comprising all full-time, regular part-time, and temporary lead meter readers and meter readers is appropriate and, thus, order that an election be held to determine whether those employees desire to be exclusively represented by the Union.

² The current bargaining unit includes all production and maintenance employees of the company, but excludes all local managers, part-time employees, office and clerical employees, watchmen, and guards, professional employees, and all supervisory employees with authority to hire, promote, discharge, discipline or otherwise effect changes in the status of employees or effectively recommend such action. The collective bargaining agreement further clarifies the production and maintenance employees as plant operators, maintenance, transportation department, sub-station department, system operations department, control room operators at power plants, chemical technologists, maintenance apprentices, plant technicians, electrical apprentices, plant warehousemen, system operators, linemen, linemen apprentice in the line department, electrician journeyman, electrician apprentices, electrician helpers, the electric meter department and transformer shop, that being meterman working foremen, meterman journeymen, protective material tester, electrician working foremen, meter transformer apprentice, meter transformer helpers, fleet mechanics, truck drivers, protection relay technicians.

STATEMENT OF FACTS

The Employer, a New Mexico corporation, is a public utility company that generates, transmits, and distributes electricity. Its corporate headquarters are located in Denver, Colorado. It operates facilities in several states including facilities in Amarillo, Lubbock, Littlefield, Borger, and Plainview, Texas, Guymon, Oklahoma, and Tucumaci, New Mexico. The Employer's facilities range in size depending on the number of customers served by each location.

A. Corporate Structure

The Employer's Operations are divided into at least two divisions, including Customer & Field Operations and the Energy Supply Business Group. The Customer & Field Operations is further divided into the Customer Care and the Field Operations departments. The current president of Customer & Field Operations is Pat Vincent. Charles Hutton is the Vice-President responsible for Customer Care and Tim Taylor is the Vice-President responsible for Field Operations.

Of particular interest in the present case are four job classifications that fall within the Customer & Field Operations: meter readers, linemen, servicemen, and metermen. Linemen, servicemen, and metermen are in the Field Operations department and are members of the existing bargaining unit. Meter readers are in the Customer Care department and are not members of the existing bargaining unit.

1. Meter Readers

Meter readers work in the Customer Care department of Customer & Field Operations and answer to Customer Care management. The chain of management for meter readers is as follows: Charles Hutton is the Vice-President of Customer Care, Beverly Brown serves as the

Director of Meter Reading, and Alice Crosswhite is the meter reading manager over facilities in Texas, Oklahoma, New Mexico, and Kansas. The supervisors to whom meter readers report directly, and who, in turn, report to Crosswhite are: Tracy Lopez, Kelly Dillard, and Larry Walker.

The Employer currently employs approximately 72 meter readers. The main duty of meter readers is to collect customer electricity usage data for billing purposes. As part of this duty, meter readers collect usage data from meters, record the data in their Itron, a hand-held electronic device, perform demand readings, which includes reading, resetting, and resealing the demand, check for obvious damage to meters, re-read meters upon customer request, and download recorded information to the billing system. Meter readers are not permitted to perform any repair work on damaged meters and may be disciplined for doing so.

Meter readers are generally required to wear a safety vest, carry a dog stick to keep dogs at bay, and wear shoes with sole and ankle support. Regarding equipment used to perform their jobs, meter readers carry an Itron, as described above, and may drive a company truck. In the meter reader classification, no distinction exists based on ability or training, such as journeyman or apprentice. The record does not reflect whether the meter reader position is an entry level position. Meter readers are required to possess either a high school diploma or a GED.

Meter readers generally work alone spending five to six hours away from the office. They may have contact with servicemen, linemen, or metermen to inform them of damaged meters or downed or exposed lines and wires. They may also assist servicemen, linemen, or metermen in locating meters on customer property. This contact varies from facility to facility and is greater at the smaller facilities. Direct communication between meter readers and servicemen, linemen, or metermen is nearly non-existent at larger facilities as it generally passes

through supervisors. At smaller facilities, because the employees are more likely to know each other, meter readers may call a servicemen, linemen, or metermen to inform them of identified problems before reporting it to their supervisor. In Littlefield, meter readers call servicemen approximately three to five times per week and linemen approximately one to three times per week to report repairs. Meter readers talk to metermen approximately two times per month to inform them of the location of a meter. The record does not reflect the frequency of contact between meter readers and bargaining unit members at facilities other than the Littlefield, Texas location.

As training for their jobs, meter readers receive four hours of classroom-type instruction and participate in 10 days of ride-alongs. The meter readers' pay scale starts at \$11.94 and they occasionally work overtime. They work from 7:00 a.m. to 3:00 p.m. in the summer and from 8:00 a.m. to 4:00 p.m. in the winter. They receive two fifteen minute breaks. They generally take breaks and lunch away from the facility. At some facilities, meter readers are required to attend safety meetings with servicemen, linemen, and metermen; however, attendance at such meetings is voluntary.

Meter readers have no direct line of promotion to bargaining unit positions and must go through the same hiring process as non-employees, submitting a new application and taking a qualifying exam. Bargaining unit members have primary bid rights to any vacant bargaining unit position. Since November, 1998, 17 meter readers have been hired into bargaining unit positions, five of those were within about the last 12 months.

Approximately 36 of the 72 meter readers share work space with bargaining unit employees. The sharing of space generally occurs in smaller offices. For example, meter readers and bargaining unit members at the facilities in Littlefield, Texas, and Guymon,

Oklahoma, each of which has approximately 10 to 15 employees, share work space. In Amarillo and Lubbock, Texas, two of the Employer's larger facilities, the meter readers and bargaining unit employees do not share work space. Although both classifications work out of the same complex, they operate out of separate buildings. Meter readers are housed with the Customer Care group. At the larger facilities, meter readers may interact with bargaining unit employees when they fill up their trucks at the company-operated gas pump or when picking up their truck near the service department building where they generally park.

2. Linemen and Servicemen

Linemen and servicemen work in the Field Operation section of Customer & Field Operations and answer to the Field Operation. The chain of management as it applies to linemen and servicemen is as follows: Tim Taylor is the Vice-President over Field Operations. Directly below him is General Manager Gary O'Hara. Reporting to O'Hara is Director of Texas/New Mexico Mitch Elmore, who supervises several managers.

Both linemen and servicemen job classifications fall within the current collective bargaining agreement.³ Linemen and servicemen are similar job classifications and both are required to go through the same apprenticeship program. The main difference in the two classifications is that servicemen work alone making minor repairs and linemen work on crews making major repairs. Servicemen are primarily responsible for responding to after-hours service calls. Servicemen may help out a crew of linemen and linemen may fill in for servicemen if the situation requires.

Upon applying to become a lineman or serviceman, a prospective employee must pass a competency exam. The lineman and serviceman classifications have the professional

³ The serviceman job classification is not specifically delineated in the current collective bargaining agreement. The parties stipulated on the record that the position was in fact a bargaining unit position.

distinctions of journeyman and apprentice. An apprentice lineman and serviceman must complete a four-step apprenticeship program and pass industry-designed exams to become a journeyman.

Linemen and servicemen are required to wear fire retardant clothing and carry climbing tools, hand tools, such as a hammer, screwdriver, and crescent wrench, and three pairs of gloves, a set rated for 500 volts, a set rated for 20,000 volts, and a set rated for 30,000 volts. They must be able to operate a bucket truck that can work hot voltage up to 34,000 volts.

Linemen work from 8:00 a.m. to 4:30 p.m. or 5:00 p.m. depending on whether they take a one-half hour or an hour lunch. They work about 300 hours of overtime per year. The record does not state specifically the wage rates of linemen and servicemen, however, the collective bargaining agreement reflects that employees in the Line Department⁴ earn between \$13.37 and \$28.52 per hour.

Servicemen may read meters when responding to customer requests. The frequency with which they read meters depends on their location. Servicemen at larger facilities do few meter re-reads, two to three per day, compared to meter readers who do 30 to 35. In smaller facilities, servicemen do the majority of re-reads out of convenience and due to cost.

3. Metermen

Metermen work in the Field Operation section of Customer & Field Operations and answer to the Field Operation chain of management. Their main job duties are repairing or replacing old or broken meters. As with the servicemen and linemen classifications, a prospective meterman must take a qualifying exam when applying for a meterman position. The

⁴ The parties' collective bargaining agreement lists the following job classifications in the Line Department: Line Working Foreman, Lineman Journeyman, Lineman Apprentice 4th Year—1st Year, Groundman (A) — (D), Warehouseman (A) — (D).

meterman classification has the professional distinction of journeyman and apprentice. An apprentice meterman must complete a four-year apprenticeship program and pass an industry-designed exam to become a journeyman.

Metermen use tools and equipment similar to servicemen and linemen: fire retardant clothing, hand tools, and gloves. The record does not state specifically the wage rates of metermen, however, the collective bargaining agreement reflects that employees in the Electric Meter Department⁵ earn between \$13.37 and \$28.52 per hour.

Bargaining History

The Employer and Union have had a collective bargaining relationship with the Union since March 1, 1947. The current collective bargaining agreement covers the period from November 1, 2002 to November 1, 2005. Under the provisions of the contract, the Union is the exclusive bargaining representative for all production and maintenance employees of the Employer. The bargaining unit consists of approximately 610 employees. In 1993, the Union unsuccessfully petitioned to represent a bargaining unit consisting of office clerical including meter readers.

ANALYSIS

Globe-Armour self-determination elections afford an unrepresented group of employees an opportunity to express their desires to be included in an existing bargaining unit currently represented by a union. If a majority of unrepresented employees cast their ballots for the union, they are taken to have indicated their desire to constitute a part of the existing unit, but if a majority vote against the union they are taken to have indicated a desire to remain outside the

⁵ The parties' collective bargaining agreement lists the following job classifications in the Electric Meter Department: Meterman Working Foreman, Meterman Journeyman, Protective Material Tester (A)—(B), Electrician Working Foreman, Electrician Journeyman, Meter/Transformer Apprentice 4th Year — 1st Year, Meter/Transformer Helper (A) — (D).

existing unit. *Phototype, Inc.*, 145 NLRB 1268 (1964); *Carr-Gottstein Foods Co.*, 307 NLRB 1318 (1992).

For a *Globe-Armour* self-determination election to be appropriate, the resulting bargaining unit must be appropriate. To determine the appropriateness of a bargaining unit the Board analyzes the facts of each case to determine if the different job classifications that are to be joined in the same bargaining unit have a community of interest. *NLRB v. Paper Manufacturers Co.*, 786 F.2d 163, 167 (3rd Cir. 1986). This community of interest test consists of seven factors:

- 1) integration of operations; 2) centralization of managerial and administrative control; 3) geographic proximity; 4) similarity of working conditions, skill, and function; 5) common control over labor relations; 6) collective bargaining history; and 7) interchangeability of employees.

Id. These factors as they apply to the facts in a case are to be weighed against each other to determine if the petitioned-for unit is appropriate. *Hotel Services Group*, 328 NLRB 116 (1999).

Traditionally, the Board has held that meter readers share a community of interest with clerical workers, and therefore has excluded them from bargaining units which included employees with service and maintenance duties. *Portland General Electric Co.*, 268 NLRB 788, 789 (1984); *El Paso Electric Co.*, 168 NLRB 983, 983 (1967); *Atlanta Gas Light Co.*, 158 NLRB 240, 243 (1966); *Battle Creek Gas Co.*, 132 NLRB 1528, 1530 (1961); *The Houston Corp.*, 124 NLRB 810, 812 (1958); *The Gas Service Co.*, 115 NLRB 944 (1956).

Portland General Electric parallels the instant facts. There, the union sought to include meter readers in an existing unit of transmission and distribution employees. In dismissing the unit's petition, the Board noted that the meter readers: 1) generally worked in separate buildings

from the bargaining unit employees; 2) spent a majority of their day away from the office; 3) worked in the customer accounts and services department and were subject to its management structure; and 4) that bargaining unit employees worked with tools. *Id.* at 788-9. The Board noted that although meter readers shared common supervision with some bargaining unit members it was insufficient to justify their inclusion. *Id.* at 789.

The record shows that the facts in the instant case are similar to those in *Portland General Electric*. First, about half of the Employer's meter readers work at facilities where their office space is separate from that of bargaining unit members. Those that do share offices with bargaining unit employees do so at small facilities where costs do not justify having multiple building facilities. As in *Portland General Electric*, the fact that some meter readers share common work space with bargaining unit employees is mitigated by the fact that they spend the majority of the day away from the office.

Second, as in *Portland General Electric*, the record fails to demonstrate significant common supervision of meter readers and bargaining unit employees. In *Portland General Electric*, one group of bargaining unit employees was classified with meter readers as part of the customer accounts and services department. *Id.* at 788. The Board determined that this supervisory overlap was minimal and unconvincing. *Id.* at 789.

In the instant case, the record reveals less common supervision than in *Portland General Electric*. The Employer's meter readers work under a different supervisory structure than the bargaining unit employees. The record reveals that meter readers work in the Employer's Customer Care department whereas no bargaining unit members work in the Employer's Customer Care department. Although meter readers and bargaining unit members do share

common managers, the record shows that common supervision exists only at the highest level of the company—President of Customer & Field Operations Pat Vincent.

Moreover, as in *Portland General Electric*, the bargaining unit members use tools and equipment that meter readers do not. For example, linemen and servicemen must carry a variety of tools whereas meter readers only use an Itron and possibly a truck to perform their job. Additionally, bargaining unit employees must complete several years of training, including completion of an apprenticeship program. In contrast, meter readers receive only four hours of classroom training and ten days of ride-along training to be fully qualified to perform their job.

In addition to the similarities with *Portland General Electric*, the record reveals additional facts that demonstrate that the instant meter readers lack a community of interest with the bargaining unit. First, integration of jobs is minimal. The extent of integration between meter readers and bargaining unit employees consists of meter readers occasionally informing linemen, servicemen, and metermen when a meter needs repair or where a meter is located. The record reflects such interaction is borne out of convenience and not a necessity. Moreover, the record reflects this interaction to be infrequent.

Additionally, the record reveals minimal interchange between meter readers and bargaining unit employees. Since January 1, 2005, 13 meter readers have been hired into bargaining unit positions, five of those were within the last 12 months. The bargaining unit consists of approximately 610 employees. Thus, the 13 former meter readers constitute approximately 2% of bargaining unit employees. The record does not show any bargaining unit employees transferring into the meter reader department.

Further, the record reveals that throughout its fifty-eight year bargaining relationship with the Employer, the Union has sought to represent meter readers on only one prior occasion. In

1993, the Union filed a petition seeking to represent meter readers as part of a unit that included the office clerical classifications and not the existing bargaining unit.

In its post-hearing brief, the Union asserts that the meter readers share a community of interest with the bargaining unit. Although it argues *Portland General Electric* is distinguishable from the instant case, it fails to discuss how. In the Employer's post-hearing brief, the Employer argues that meter readers are more akin to clerical employees than production and maintenance, relying on *Portland General Electric*, *Battle Creek Gas Co.*, 132 NLRB 1528, 1530 (1961), and *The Houston Corp.*, 124 NLRB 810, 812 (1958).

As discussed above, the Board has traditionally found meter readers' interests to be more closely aligned with office clericals. *Portland General Electric Co.*, 268 NLRB 788, 789 (1984); *El Paso Electric Co.*, 168 NLRB 983, 983 (1967); *Atlanta Gas Light Co.*, 158 NLRB 240, 243 (1966); *Battle Creek Gas Co.*, 132 NLRB 1528, 1530 (1961); *The Houston Corp.*, 124 NLRB 810, 812 (1958). *See also The Gas Service Co.*, 115 NLRB 944 (1956).

However, the Board has also found appropriate meter reader-only units. In *Southern Union Gas Co.*, 175 NLRB 870 (1969), the Petitioner sought a meter reader-only unit. There, the Employer, while not suggesting an appropriate unit, contended that meter readers were part of its overall operation. The Board concluded that a meter reader-only unit was appropriate in large part because of a lack of functional integration between the meter readers and the other employees and their separate, immediate supervision.

The instant facts also reveal a lack of evidence of functional integration between meter readers and the other unit employees. Further, and as stated above, the meter readers lack significant common supervision with the other bargaining unit employees.

In sum, the record fails to demonstrate that meter readers share a community of interest with the existing bargaining unit. Meter readers work in separate departments under different supervision, perform different duties that require different training and tools, are not significantly integrated with the bargaining unit, and engage in minimal interaction with bargaining unit employees. Because of the lack of a community of interest with the existing bargaining unit, I determine that a *Globe-Armour* self-determination election is not appropriate.

I do find, however, that a unit consisting only of full-time, regular part-time, and temporary lead meter readers and meter readers is appropriate for the purposes of collective bargaining. As in *Southern Union Gas Co.*, 175 NLRB 870 (1969), a case where the Board found a meter reader-only unit appropriate, the instant facts reveal meter readers have different common immediate supervision from the other bargaining unit employees. Also, meter readers perform work separate and apart from the other unit employees, lack any substantial integration with the unit employees, and do not commonly transfer into unit positions and vice versa. Based on these facts, a unit consisting of full-time, regular part-time, and temporary lead meter readers and meter readers is appropriate.

CONCLUSION AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer, a New Mexico corporation, is a public utility company that generates, transmits, and distributes electricity. During the preceding 12 months, a representative period, the Employer derived

gross revenues in excess of \$1 million and during that same period purchased and received goods and materials valued in excess of \$50,000, directly from points located outside the state of Texas. Based on the foregoing, I find the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.
4. The parties stipulated to the petitioner's status as a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time, regular part-time, and temporary lead meter readers and meter readers.

Excluded: All other employees, supervisors, clerical employees, and guards as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Brotherhood of Electrical Workers, Local Union 602.

The date, time, and place of the election will be specified in the notice of election that the

Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Fort Worth Regional Office, Federal Office Building, Room 8A24, 819 Taylor Street, Fort Worth, Texas 76102 on or before June 23, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club*

Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.S., Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. EST, on June 30, 2005. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance may also be found under "E-Gov" on the National Labor Relations Board web site: www.nlr.gov.

Dated: June 16, 2005

/s/ Curtis A. Wells
Curtis A. Wells, Regional Director,
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